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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/862,815	05/22/2001	Giovanni Carlucci	CM2353	1148

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EXAMINER

GUARRIELLO, JOHN J

ART UNIT PAPER NUMBER

1771

DATE MAILED: 03/14/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/862815

Applicant(s)

Carlucci et al.

Examiner

John Guarriello

Group Art Unit

1771

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-21 is/are pending in the application.
- Of the above claim(s) 1-17, 20, 21, 22 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 18, 19 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____.

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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DETAILED ACTION

Election/Restriction

15. Restriction to one of the following inventions is required under 35

U.S.C. 121:

- I. Claims 1-14, drawn to Method of making, classified in class 264, subclass 215.
- II. Claims 15-17, 20-22, drawn to absorbent article with layers, classified in class 604, subclass 358.
- III. Claims 18, 19, drawn to an absorbent article for odor, classified in class 442, subclass 394.

16. The inventions are distinct, each from the other because:

17. Inventions I and II are related as process of making and product made.

The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the

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product as claimed can be made by another and materially different process which can be used for making deodorizing systems for air conditioners.

18. Inventions II and III are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as liners for garbage receptacles and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

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Furthermore, Groups II and III are independent since apart from chemistry odor control, they share no chemistry or structure.

19. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

20. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

21. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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22. During a telephone conversation with Jeff Bamber on 1/17/2003 a provisional election was made with traverse to prosecute the invention of Group III, claims 18, 19. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-14 Group I and claims 15-17, 20-22, Group II withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

23. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

24. Claim 18 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for anti slip properties as described in the instant specification on page 4, lines 4-10, does not reasonably provide enablement for claim 18, line 5. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in **scope** with this

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claim. It is the Examiner's position that "anti-slipping properties" are stated on page 4, lines 4-10 and should be put in claim 18.

Claim Rejections - 35 USC § 102

25. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 18 is rejected under 35 U.S.C. 102(b) as being anticipated by

Insley 5,733,629.

Insley describes a sorbent article (corresponding to the claimed absorbent structure), (see abstract). Insley describes the article with excellent sorptive and non-slip properties, (see abstract). Insley describes the sorbent layer can incorporate other particulate or fibrous ingredients as desired to impart specific additional properties, which can be superabsorbents, biocides, sanitizers, fragrances, (which corresponds to the claimed odour control

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means) and so on (column 3, lines 58-65). Regarding the absorption capacity of at least 0.06 grams per square cm, this would be inherently met since Insley describes corresponding materials as the claimed invention, (column 3, lines 58-63). Insley describes the essential limitations of the claimed invention. Claim lacks novelty.

26. Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by Hsueh et al. 5, 536,264.

Hsueh describes an absorbent composite with an absorbent macrostructure layer, (see abstract). Hsueh describes the absorbent composite can be a sheet, (column 6, lines 34-37). Hsueh describes the layers can be included with particulate material which can provide odor control, corresponding to the claimed odour control means, (column 11, lines 36-41). Hsueh describes other materials can be used for wetness indication, (column 12, lines 42-49). Hsueh describes the essential limitations of the claimed invention. Claim lacks novelty.

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27. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mroz et al. 4,231,370 describes wetness indicators through pH-change or color change, see abstract, column 2, lines 54-68. FR 2 711 317 discloses a wetness indicator in the form of a coating, (see whole document). Paul 5,611,486 describes layer absorbent structure, (see abstract, column 5, lines 63-67).

28. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is 703-308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



John J. Guarriello:gj

Patent Examiner

March 3, 2003

March 6, 2003

March 10, 2003



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